APPENDIX A.

Point (y) page 10 of Brief filed by your Petitioner, Paul H. Barnes with Piekarski, J. of the Municipal Court of Philadelphia, subsequent to Hearings of November 25, 1941 and March 27, 1942, and arguing the contention of your Petitioner and his wife's separate income should be considered along with his income in said Court in deciding as to Vacation or Substantial Reduction of said Order of $15. per week, of August 30, 1939, against him:—

> "(y) That the incomes of both Petitioner and Respondent, are to be considered herein, and are as follows:
>
> "Petitioner's net income (making allowance for the non-recurring Co-Executor's Commission of $29.87 mentioned in paragraph (k) of this Brief, the non-recurring Contingent Interest of $272.50 and then adding the $221.33 brought to your Honor's attention at the request of Petitioner (Recapitulation, page 1 of Exhibit A of Petitioner's Petition) speaks for itself and shows a total net income received by the Petitioner, for the Accounting Period, of $448.89; while Respondent's income, as taken from the Testimony, pages 60 and 61 of November 25, 1941, and her exhibits (allowing her claim for the non-recurring item of $262.39) shows a total net income received by Respondent, for the Accounting period, of $805.75, not including therein the moneys received by Respondent from the Petitioner by order of the Muncipal Court."

(Note: the above $805.75 does not include the $151.14 which Respondent said was received by her before the beginning of said Accounting period of Sept. 1, 1940 to August 31, 1941, but which the Statement of Girard Trust Company, (Petitioner's Exhibit 4—R. 60) showed as paid to her Sept. 3, 1940, i.e. within the said Accounting period, and which was therefore claimed as part of her said income in Petitioner's printed Brief before the Superior Court of Pennsylvania (see Appendix-B hereof) making her income $956.89).

APPENDIX B.

QUOTATIONS FROM PETITIONER'S PRINTED BRIEF BEFORE THE SUPERIOR COURT OF PENNSYLVANIA AT ARGUMENT, NOVEMBER 12, 1943.

AS TO WIFE'S INCOME TO BE CONSIDERED IN CONJUNCTION WITH PETITIONER'S INCOME:

Page 1 of said printed Brief:

STATEMENT OF QUESTIONS INVOLVED.

"2. Whether the Court should not have taken into consideration Appellee's separate income in deciding the Appellant's petition for Vacation or Substantial Reduction of the Order?"

"8. Whether the Court erred in refusing to sustain Appellant's petition for Vacation or Substantial Reduction of the Order of $15.00 per week?"

ARGUMENT

QUESTION 2.

Page 6-7

"It is respectfully submitted that the Court below erred when it failed to take into consideration. IN FACT, TOTALLY IGNORED the *Appellee's substantial income* during said accounting period (September 1, 1940 to August 31, 1941), as shown by statement from the Girard Trust Company in the sum of $1151.78 (Petitioner's Exhibit No. 4, page 82a. Testimony of November 25, 1941) and by the testimony of Mrs. Barnes (Appellee) on cross examination (pages 69a to 71a, Testimony of November 25, 1941) that she received also from her New York Shipbuilding Company and "Pennroad" stocks the sum of $67.50 for the same period or a total independent income of $1219.28, from which, however, Mrs. Barnes (Appellee) deducts $151.14, which she claims she received *before* the said accounting period (although it shows on the Girard Trust Company statement as paid to her September 3, 1940 which is within said accounting period), and further

deducts $262.39 which she claims deductible as a "non-recurring" Capital Return item received from a foreclosed property, thus reducing her said $1219.28 income for said accounting period to a net independent income according to her said method of calculating of $805.75."

* * * * * * *

Page 8.

"Thus, giving Appellee every deduction asked by Appellee, she still had an independent income of $805.75 and the $780 received from Appellant during said Accounting period, or a total of $1585.75 as against Appellant's total lack of income and an actual depreciation of his estate of $331.11 and a then current tax liability of $511.23, besides Appellant's other large tax liabilities on his said real properties in Philadelphia, *so that is the reason Appellant asks this Court for a vacation of said Order, or, at least, a very substantial reduction thereof.*"

Question 8

Page 17.

* * * * * * *

at Page 18:

"Again, while Appellant has come before the Court below and before this Court with a petition showing vastly changed and depreciated conditions, backed up with a detailed and simple statement of every item of his income and expenses, with vouchers therefor, except in four isolated instances of minor payments, as explained by Appellant's counsel, Mr. Thompson, (pages 12a and 13a, Hearing of November 25, 1941), to the Court below, (other than expenses of Appellant's personal living, and the payments made to Appellee under the Order), Appellee, in her testimony, while on cross-examination, admitting she had about $200.00 in her bank account in the Land Title Bank and Trust Company, Philadelphia, later, on direct examination by her counsel testified she did not own all of said moneys in said bank account; that she did not know how much was hers and how much was her sister's, and, finally, that none

of the said $200 and over was hers, thus in her evasiveness flatly contradicting herself (Testimony of November 25, 1941, page 71a; Testimony of March 27, 1942, pages 103a to 104a and 108a to 111a, inclusive)."

As To Denial of Petitioner's Deductions for His Counsel Fees and Legal Expenses

Page 1 of said printed Brief:

"STATEMENT OF QUESTIONS INVOLVED.

"5. Whether the Court was justified in refusing to allow as deductions from Appellant's income his Counsel fees and legal costs?"

Question 5

Page 14:

"It is respectfully submitted that the Court erred in its attitude toward Appellant's counsel fees and legal expenses, because it is an established principle of this Democratic form of government that a man is entitled to his day in Court in any matter that he believes pertinent to his well being, and, a necessary sequence, it follows that, to accomplish such, he is entitled to proper representation, and, to have the same, must engage counsel, which Appellant did, and for which Appellant paid reasonable fees, there being no gratuitous bureau or method in the Courts providing for the same. (See Testimony of November 25, 1941, pages 20a and 21a)."

APPENDIX C.

Explanation of "Exhibit A"

This "Exhibit A", as contained in the Record in these proceedings, is as it appeared before the Superior Court of Pennsylvania at the Oral Argument, November 12, 1943.

After "Exhibit A" was completed and after the Hearing of November 25, 1941, your Petitioner discovered that he had inadvertently omitted therefrom income received by him during the accounting period, September 1, 1940 to

August 31, 1941, now before the Supreme Court of the United States, the sum of $221.33 income received by your Petitioner from the Estate of his Aunt, Mildred E. M. King, deceased, so your Petitioner voluntarily brought it to the attention of Judge Piekarski at the Hearing of March 27, 1942, at which time Judge Piekarski added said $221.33 to the $599.70 net Personal Income Gain at the foot of page 12 of said "Exhibit A" (Record, page 6M), thereby raising said Personal Income net gain to $821.03, but it was not added to the Personal Income Account for the month of October, 1941, on page 7 of "Exhibit A" (Record, page 6G—where the Petitioner's Personal Income for that month appears, as it did before said addition of $221.33, as $125.60), although said $221.33 was added to said month of October, 1941, in the Recapitulation, page 1 of said "Exhibit A" (Record, page 6A); nor was said addition of the $221.33 reflected *in the totals*, page 12 of "Exhibit A" (Record, page 6M) until added thereto, by agreement of the parties at the Bar of the Superior Court at the said Oral Argument, and then resulted in total Personal Account Income (which included Capital Returns) of $13,163.02 plus said $221.33 or $13,384.35, while the total Personal Account Expenses, page 12 of "Exhibit A" (Record, page 6M) remained the same, to wit: $12,563.32 (which included Capital Returns Re-invested).

Now, when the Capital Returns, page 2 "Exhibit A" (Record, page 6B) of $10,099.60 were deducted from the total Personal Account Income (which included said Capital Returns) of $13,384.35 that left your Petitioner's *gross* Personal Account Income $3,284.75 to which was added your Petitioner's *net* Business Account Income of $332.69 (Three Hundred Thirty-two Dollars and Sixty-nine cents),—after deducting the contested Rent Account and the contested Automobile Account,—thus making your Petitioner's total income, from both his Personal Investments and from his Business, the sum of $3,617.44 (which was agreed upon by Counsel for your Petitioner and for your Petitioner's said wife, at the Bar of the Superior Court at said Oral Argument, as correct) while the deduction of the $9,697.14 Capital Re-invested (page 2 of "Exhibit A" Record, page 6B)

from the total Personal Account Expense of $12,563.32 (which included said Capital Re-investments) left the sum of $2,866.18 as your Petitioner's expenses, and by then taking the said $2,866.18 from the total of Petitioner's Income of $3,617.44 leaves the sum of $751.26 shown in the Recapitulation (page 1 of "Exhibit A", Record, page 6A), and thereafter by the deductions claimed by your Petitioner in said Recapitulation, your Petitioner's net income was reduced to $478.76, as shown thereon, from which your Petitioner claimed in his printed Brief and at the Oral Argument before the Superior Court, November 12, 1942, a further non-recurring item deduction of $29.87, received by him as Co-Executor of the said Mildred E. M. King Estate, during said accounting period covered by said "Exhibit A" which reduced your Petitioner's said net income from $478,76 to $448.89 for said accounting period (which, of course, he would not have had, had he paid the taxes on his Philadelphia properties which he was unable to pay out of his income). See also Record pages 110, 111 and 112 Question A, (1), (2), (3), (4), (5).

APPENDIX D.

In the Superior Court of Pennsylvania, Philadelphia District

No. 24 October Term, 1940

Commonwealth ex rel. Emma K. Barnes

vs.

Paul H. Barnes, *Appellant*

Record

Appeal from the Order and Decree of August 30, 1939 of the Municipal Court of Philadelphia, Domestic Relations Division, No. 81622.

Page 160a.

Emma K. Barnes—Direct.

"Q. You receive an income, do you not, from the estate of your father, Charles Klauder, deceased?

A. Yes, I do receive an income.

Q. And your income during the year 1939—has that been less than the income which you received from the estate in 1938?

A. It was less.

Q. How much?

A. About $60.

Q. How much did you receive in 1939 thus far?

A. I received $265.72.

Page 160a.

Emma K. Barnes—Direct.

Q. Other than the income of $266—

A. $265.

Q. Which you received thus far this year from your father's estate, and the $5 a week you have been receiving from your husband, do you have any other source of income?

A. I have no other source of income.

Page 161a.

Emma K. Barnes—Cross

Cross Examination.

By Mr. White:

Q. What is the interest of your father's estate?

A. One-fifth of the income.

Q. Don't you have any interest in your mother's estate?

A. No, my mother did not leave any estate in trust.

Q. Her interest after her death was merged into your father's estate, is that right?

A. My mother's estate was a little estate, separate, but her estate—her interest in my father's estate came to us at her death.

Q. You say that your income so far this year has only been $265?

A. Yes.

Q. You expect another dividend the 1st of September, don't you?

A. Yes, the first week in September.

Q. You get another dividend?

(Not answered.)

Q. About how much will that be?

A. Last year it was $213. Of course, you can't tell, it varies. It might be less.

Q. This year you expect practically $175 to $200 on the next quarter?

Page 161a.

Emma K. Barnes—Cross.

A. I don't say I expect it; I hope for it.

Q. Then you have another dividend in December, don't you?

A. Yes.

Q. How much did you get last year from the estate of your father?

A. Last year? I received $934.74.

Q. This year you expect to receive the same with probably a difference of $60?

Page 162a.

Mr. Kagle: That is objected to. Her testimony would be incompetent as to her expectation. She received $900 last year. She is only speculating——

The Court: Up to date she got $265; she will get another dividend in September. If she knows what her interest will be she may testify.

By Mr. White:

Q. When did you get your first dividend this year?

A. March 1st.

Q. You got how much money?

A. $128.22.

Q. Then you got the next dividend when?

A. June 1st.

Q. Then you will get the next dividend around September?

A. Around September, yes.

Q. Your other dividend is in November or December?

A. December.

Q. Last year you received $965, is that right?
A. $934. That was unusually large, larger than it was in 1937.
Q. This house your husband lives in, which he values at $10,000—he lives there by himself, does he not?
A. I can't say: I don't know.

Page 162a.

Emma K. Barnes—Cross.

Q. The house down at Dorchester is unoccupied, to your knowledge?
A. I know nothing about that.

Certification as to Correctness of Quotations.

We, George W. Cupps, Jr. and Charles S. Thompson, Esquires, Counsel for Paul H. Barnes, Petitioner to the Supreme Court of the United States for Writ of Certiorari to the Superior Court of Pennsylvania, do hereby certify the above quotation from pages 160a, 161a and 162a of the Record of the above entitled proceedings to be true and correct.

CHARLES S. THOMPSON,
GEORGE W. CUPPS, JR.,
Counsel as aforesaid.